

No. 863

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

THE CENTRAL TRUST COM-
PANY OF NEW YORK (A COR-
PORATION), AND THE HELENA
POWER AND LIGHT COM-
PANY (A CORPORATION),

Appellants,

vs.

JOHN W. WARREN,

Appellee.

TRANSCRIPT OF RECORD.

Upon Appeal from the United States Circuit
Court for the District of Montana.

FILED
JUL 25 1902

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In the Circuit Court of the United States, Ninth Circuit, District of Montana.

CENTRAL TRUST COMPANY OF
NEW YORK,

Complainant,

vs.

HELENA POWER AND LIGHT COM-
PANY and JOHN W. WARREN,

Defendants. /

Stipulation as to Printing Record.

It is hereby stipulated and agreed by and between the parties to the above-entitled action, that in printing the record on appeal herein to the Circuit Court of Appeals, all and singular the description of the property mortgaged by the defendant Helena Power and Light Company to the complainant Central Trust Company, as contained in the decree, may be omitted from such record; it being understood and agreed, however, that a full copy of said decree shall be transmitted to the clerk of said Circuit Court of Appeals for use upon the hearing of said cause or otherwise.

BUTLER, NOTMAN, JOLINE & MYNDERSE, and
H. G. and S. H. McINTIRE,

Solicitors for Complainant.

T. J. WALSH and

R. R. PURCELL,

Solicitors for Defendant John W. Warren.

H. S. HEPNER,

Solicitor for Defendant, Helena Power and Light
Company.

[Endorsed]: Title of Court and Cause. Stipulation as to Printing Record. Filed July 8, 1902. Geo. W. Sproule, Clerk.

In the Circuit Court of the United States, Ninth Circuit, District of Montana.

THE CENTRAL TRUST COMPANY
OF NEW YORK,

Complainant,

vs.

HELENA POWER AND LIGHT COM-
PANY and JOHN W. WARREN,

Defendants.

Caption.

Be it remembered, that on the 15th day of October, 1901, the complainant herein filed its bill of complaint, which bill of complaint is in the words and figures as follows, to wit:

In the Circuit Court of the United States, for the District of Montana.

Bill of Complaint.

To the Honorable Judges of the Circuit Court of the United States for the District of Montana, Sitting in Equity:

Central Trust Company of New York, a corporation created and existing under the laws of the State of New York, and a resident and citizen of the State of New York, brings this its bill of complaint against the Helena Power and Light Company, a corporation cre-

ated and existing under the laws of the State of Montana, and a resident and citizen of the State of Montana, engaged in business and owning real and other property situated in the State of Montana, and John W. Warren, a resident and citizen of the State of Montana, and thereupon your orator complains and says:

I. On and prior to the first day of January, 1895, The Helena Power and Light Company (hereinafter for brevity called the Helena Company) was, and still is, a corporation duly created and existing under and pursuant to the laws of the State of Montana, and was and is fully authorized and empowered to own the property hereinafter described, and to engage in the business for which it was formed, and to execute and deliver the bonds and mortgage hereinafter mentioned, and John W. Warren was at the time of the filing of this bill a resident and citizen of the State of Montana.

II. Your orator, Central Trust Company of New York, was at the times hereinafter mentioned, and now is, a corporation created and existing under the laws of the State of New York, and bearing the corporate name of Central Trust Company of New York, and at all times hereinafter mentioned was, and now is, duly authorized and empowered under the terms of its charter to take and hold in trust the property transferred and conveyed to it in trust as hereinafter stated, and to execute and perform the trusts imposed upon it under and by virtue of the mortgage or deed of trust hereinafter described.

III. On or about the first day of January, 1895, the defendant Helena company did, by a resolution duly

passed at a meeting of the trustees, duly authorize and direct the issue of 1,000 coupon bonds of one thousand dollars (\$1,000) each, bearing interest at 5 per cent per annum, numbered consecutively from 1 to 1,000, both inclusive, and to secure the payment of the interest and principal of all of said bonds equally and ratably, without priority or distinction, irrespective of the date of the issue of same, by mortgage or deed of trust to your orator, as trustee, upon all the property and franchises of the Helena Company. In pursuance of such resolution and determination and in the exercise of its lawful corporate powers, and due corporate action having first been had, said defendant Helena company made and executed all of these said bonds for \$1,000 each, by each of which, for value received, it promised to pay to the bearer on the 1st day of January, 1925, at the office of your orator, in the city of New York, the sum of \$1,000 in gold coin of the United States of America, with interest thereon at the rate of 5 per cent per annum, payable in like gold coin on the first day of January and on the first day of July in each year, at the office of your orator, upon presentation and surrender of the coupons thereto annexed, as they severally should become due, until such principal sum should be fully paid.

IV. On or about the 1st day of January, 1895, said defendant, Helena company, in pursuance of the resolution and determination above mentioned, and in the due exercise of its corporate power, and due corporate action having first been had, in order to secure the payment of the bonds authorized to be issued and the interest

thereon as the same should be payable according to the tenor of said bonds and the coupons thereto attached, made, executed, and delivered to your orator a certain mortgage, or deed of trust, bearing date January 1, 1895, and therein and thereby granted, bargained, sold, aliened, conveyed and confirmed unto your orator, its successors and assigns, certain premises and property described in said mortgage, a copy of which said mortgage is hereto annexed, marked exhibit "A," and your orator prays that said exhibit "A" may be taken as part of this bill as if the same were set forth at length herein.

To have and to hold all and singular the said premises, lands, franchises, privileges and personal property conveyed by the said mortgage to your orator, and to its successor and successors in said trust, to its and their assigns in trust under the terms of said mortgage, for the equal pro rata benefit and security of the person or persons, firm or firms, and bodies politic which should become and be the lawful owners of said bonds and coupons, without preference to one bond over another by reason of the priority of issue, or of any act or thing whatsoever.

V. Said mortgage or deed of trust was authorized, made, executed, and delivered in all respects in conformity with law, and was duly recorded in the office of the county recorder of the State of Montana for the county of Lewis and Clarke, May 7th, 1895, at 57 minutes past 2 o'clock P. M., on page 405 of Book 12 of Mortgages.

Your orator duly accepted the trust created in and by

said mortgage or deed of trust before the recording of the same as aforesaid.

Your orator refers to said mortgage so recorded and to the true copy thereof annexed to this bill of complaint marked exhibit "A" for a particular statement of the terms and provisions of said mortgage or deed of trust, and your orator prays that said copy of said mortgage or deed of trust marked exhibit "A" may be taken in all respects as if it had been fully set forth in the body of this bill.

VI. That 425 of the bonds above mentioned, issued under and secured by said mortgage or deed of trust so made and executed as aforesaid, were duly authenticated by the indorsement thereon of the certificate of your orator as provided in said bonds and mortgage, and so authenticated were duly delivered by it, and as your orator is informed and verily believes all of said 425 bonds have been duly issued, negotiated, and sold to divers persons who have thereby become bona fide owners thereof as purchasers for value, and all are now outstanding and valid and binding obligations of the defendant Helena company. Your orator is informed and believes that the holders of said bonds are numerous, and the names and residences of many of such holders are unknown to your orator.

That in and by the terms of the mortgage securing the same, exhibit "A," it was provided that one hundred and seventy-five of said bonds should be applied exclusively to the payment and discharge of the existing bonded indebtedness of the Helena Gas Light and Coke Company,

as soon as said indebtedness should mature, and that said one hundred and seventy-five bonds after being certified should remain in the hands of your orator subject to the right of the Helena company to sell the same at any time on or before sixty days prior to the maturity of said bonded indebtedness of the Helena Gas Light and Coke Company, and if sold the proceeds thereof to be paid to your orator for application as provided above, it being understood purchaser of said bonds should not be entitled to delivery of the same until the full face value had been paid into the hands of your orator. That the said one hundred and seventy-five bonds are now in the possession of your orator pursuant to the provisions above set forth, and have not been sold or delivered, and are held by your orator subject to the provisions of said mortgage, exhibit "A."

VII. The defendant Helena company made default in the payment on the first day of July, 1899, of the installment of interest due on that day on all of said bonds issued and outstanding as aforesaid and secured by the said mortgage to your orator, and the said default still continues.

Your orator is informed and believes that demand was duly made for the payment of said installment of interest due upon said bonds July 1, 1899, as aforesaid, and that the coupons representing such installment of interest, or many thereof, were duly presented for payment and payment thereof duly demanded, but the payment of said installment of interest and of said coupons was refused, and that neither on said 1st day of July, 1899, nor at any time since, has the defendant Helena Com-

pany, or anyone else on its behalf, provided at the office of your orator, or elsewhere, any funds with which to pay the said installment of interest or any part thereof, and your orator alleges that no part of said installment of interest has been paid by said defendant Helena company, or by any other person or corporation, and that the whole of said installment of interest remains due and unpaid.

Your orator further alleges that the defendant Helena company has likewise made default in the payment of installments of interest which fell due January 1, 1900, July 1, 1900, January 1, 1901, July 1, 1901, upon all the bonds issued and outstanding as aforesaid, and that such default still continues, though due demand was made for payment of said installments of interest due upon said days above set forth.

VIII. That on or about the 6th day of August, 1901, your orator gave notice in writing to the defendant Helena company of the defaults above set forth, and that pursuant to the terms of article fifth of said mortgage or deed of trust it elected to treat the whole amount of the principal of the bonds secured by said mortgage or deed of trust as forthwith due and payable, such determination, election, and notice on behalf of your orator were evidenced by a written notice thereof enclosed in a securely closed postpaid wrapper directed to the defendant Helena company as follows: "Helena Power and Light Company, Helena, Montana," and upon information and belief your orator alleges that said notice was duly received and retained by said Helena company. Your orator is informed and believes that the defendant

John W. Warren has or claims some interest in or lien upon said real property of the Helena company, but the said claim or lien, if any such there is, is subsequent to the lien of said mortgage or deed of trust.

IX. Your orator is informed and believes that the defendant Helena company is insolvent and wholly unable to pay its debts and obligations, and that the property and premises covered by said mortgage are of a value less in amount than the amount of the bonds issued hereunder, and that said mortgaged property and premises are and constitute an inadequate security for the payment of the said bonds.

Your orator further shows that the financial affairs of the defendant Helena company are in an embarrassed condition, and that there are many outstanding claims against it, as it is informed and believes; that the enforcement of such claims by seizure of the property of the defendant Helena company would result in the destruction of the business of that company, and would impair the value of its other property, and would render the security which you orator and the holders of said bonds have under said mortgage, still more insufficient than it is at present, and your orator, as trustee under said mortgage, cannot execute or perform the trusts provided therein and thereby, or protect the rights of the holders of the bonds secured thereby without the aid or interposition of this Honorable Court, sitting in equity, without a judicial sale of the mortgaged premises, franchises and appurtenances covered by the said mortgage or deed of trust, and your orator further shows that until such sale can be had and the proceeds thereof dis-

tributed, it is expedient and necessary that all said mortgaged property of every nature and description whatsoever should be placed in the possession and under the control of a receiver to be appointed by this Honorable Court, with such proper power and control over the same as to this Court may seem just.

Your orator is informed and believes that the mortgaged property constitutes and formed one single plant and property, and that it is for the benefit of all parties that it should be sold as an entirety, and that the value of it in portions or sections is, and will be, very much less than its value as a whole.

X. Your orator is informed and believes that no proceedings have been had at law or in equity for the collection of the debt secured by said mortgage or any part thereof, save only this suit.

Your orator, therefore, in view of the premises seeks the aid of this Honorable Court in equity, wherein only adequate relief can be administered in matters of this nature and prays as follows:

1. That the said mortgage dated January 1st, 1895, be foreclosed.

2. That the lien of said mortgage may be decreed and established as a lien upon the property and franchises covered thereby and mentioned therein, and that the amount due for principal and interest upon said bonds outstanding and secured by said mortgage may be ascertained and determined.

3. That in the default of the payment of the sum so found due within the time to be limited by a decree of this Honorable Court, it may be decreed that the de-

defendant and all persons claiming under it any interest in said mortgaged property as aforesaid subsequent to the lien of said mortgage, be absolutely barred and foreclosed of and from all right or equity of redemption of, in, and to said mortgaged premises, and property or any part thereof, and that a sale of the whole of the mortgaged property and premises be ordered in accordance with law and the practice of this Honorable Court, and that the proceeds may be applied to the expenses of this suit including proper attorney, solicitors and counsel fees, and to the payment of the amounts found due as aforesaid and the balance thereof as the Court may direct.

4. That if the proceeds of said sale shall be insufficient to pay the amounts due upon said bonds for principal and interest, the defendant Helena Company be adjudged liable to pay, and be required to pay, the amount of such deficiency to your orator or to the owners or holders of said bonds and coupons.

5. That a receiver be appointed to take possession of the property, estate, and franchises of the defendant Helena company, and the earnings and proceeds thereof, with power to operate the said property and to carry on the business of the defendant Helena company, and with all such power and authority as may be requisite to preserve the same until the sale thereof as the same may be decreed and ordered by this Honorable Court, and to secure the earnings and income of said property to the use of the bondholders, and with such powers and authority as are usually possessed by receivers in like cases as this Court may direct.

6. That the defendant Helena company, its officers, directors and all other persons claiming, or pretending to claim, under them and all other persons empowered may be restrained by injunction of this Honorable Court from interfering with and disposing of its plant, premises, property and franchises, or any part thereof.

7. That the defendants may answer all and singular the premises but not under oath.

8. That you orator may have such other and further relief in the premises as the nature and circumstances of the case may require and to your Honors seem meet.

May it please your Honors to grant unto your orator not only a writ of injunction conformable to the prayer of this bill to be issued to the Helena Power and Light Company, and also a writ of subpoena to be issued to said Helena Power and Light Company and to said John W. Warren, commanding it and him, at a certain time and under a certain penalty to be therein specified, to appear before this Honorable Court then and there to answer the premises, and to abide by the order and decree of the Court therein, and that said corporation may appear herein according to law.

CENTRAL TRUST COMPANY OF NEW YORK.

[Seal]

By E. FRANCIS HYDE,

Second Vice-President.

BUTLER, NOTMAN, JOLINE, and MYNDERSE,
H. G. and S. H. McINTIRE,

Solicitors for Complainant.

H. G. McINTIRE,

Of counsel.

State and County of New York, }
Southern District of New York. } ss.

E. Francis Hyde, being first duly sworn, deposes and says that he is an officer, to wit, the second vice-president of the Central Trust Company of New York, the complainant in this suit; that he has read the foregoing bill of complaint; that the same is true of his own knowledge except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true; that the seal affixed to said bill is the corporate seal of said complainant, and was thereunto affixed by due and proper authority.

E. FRANCIS HYDE.

Sworn to before me this 9th day of October, 1901.

[Seal]

WILLIAM A. EADIE,

Notary Public, Richmond County. Certificate filed in
New York County.

Exhibit "A."

(To Bill of Complaint.)

This indenture, made this first day of January, in the year of our Lord one thousand eight hundred and ninety-five, between the Helena Power and Light Company, a corporation duly incorporated and existing under and by virtue of the laws of the State of Montana, and having its principal place of business in the city of Helena, in the county of Lewis & Clarke, State of Montana, hereinafter named the grantor, the party of the first part, and the Central Trust Company of New York, a corporation duly incorporated and existing under and by vir-

tue of the laws of the State of New York, and having its principal place of business in the city of New York, in said State of New York, and hereinafter termed the trustee, the party of the second part, witnesses:

That whereas the trustees of the said grantor at a special meeting duly and regularly called for that purpose and held at the office of said company in the city of Helena, Montana, on the twenty-sixth day of January, A. D. 1895, due and proper notice having been given of said meeting, did, by a resolution duly passed by said trustees, authorize and direct the issue of one thousand coupon bonds of said grantor of one thousand dollars each, bearing interest at five per cent per annum, said bonds to be substantially in the following form, to wit:

UNITED STATES OF AMERICA.

State of Montana.

Helena Power and Light Company.

First Mortgage Five Per Cent Gold Bonds.

No. _____ ; \$1,000.00

For value received, the Helena Power and Light Company, a corporation duly incorporated and existing under and by virtue of the laws of the State of Montana, acknowledges it is indebted and hereby promises to pay to bearer one thousand dollars, in gold coin of the United States of America, at the office of the Central Trust Company of New York, in the city of New York, State of New York, on or before the first day of January, A. D. 1925, with interest thereon at the rate of five per cent per annum, payable in like gold coin, on the first day of January and on the first day of July of each

year, at the office of the Central Trust Company of New York, in the city of New York, State of New York, upon the presentation and surrender of the annexed coupons as they severally become due. This bond is one of a series of one thousand bonds of like tenor and date, numbered consecutively from one to one thousand, both numbers inclusive, and amounting in the aggregate to one million dollars, each of said bonds being of the denomination of one thousand dollars, the payment of which bonds is secured by a first mortgage or deed of trust, of even date herewith, executed by the said Helena Power and Light Company to the Central Trust Company of New York, of the City of New York, as trustee, conveying certain real estate, personal property and franchises in the city of Helena, in the county of Lewis & Clarke, State of Montana, said property being more particularly described in a mortgage or deed of trust securing said bonds, and it is hereby certified that all proceedings relating to this issue have been duly had and performed and that all laws of the State of Montana, in relation to said issue have been complied with.

If default be made in the payment of any installment hereon for sixty days after the same becomes due, the principal of this bond shall become due and payable upon the conditions provided in the mortgage or deed of trust securing the same.

This bond shall not become obligatory until the certificate endorsed thereon shall be signed by the trustee.

In witness whereof, the Helena Power and Light Company has caused these presents to be sealed with its

corporate seal and signed by its president and attested by its secretary, and has likewise caused a fac-simile to the signature of its treasurer to be lithographed on each of the annexed coupons this first day of January, A. D. 1895.

HELENA POWER AND LIGHT COMPANY,

By (Signed) H. M. PARCHEN,

President.

Attest:

[Seal]

(Signed) H. L. WALKER,

Secretary.

(Form of Coupon.)

\$25.00

\$25.00

Helena, Montana, January 1, 1895.

The Helena Power and Light Company will pay to the bearer twenty-five dollars, in gold coin of the United States at the office of the Central Trust Company of New York, in the city of New York, State of New York, on the first day of _____ A. D. _____, being six months' interest then due on its first mortgage bond No. _____.

(Signed) HERMAN GANS,

Treasurer.

(Form of Trustee's Certificate.)

The Central Trust Company of New York, of the city of New York, the trustee in the mortgage or deed of trust within referred to, hereby certifies that the within is one of the bonds mentioned in said mortgage or deed of trust.

CENTRAL TRUST COMPANY OF NEW YORK,

Trustee.

By _____,

And whereas the execution of this mortgage or deed of trust has been duly authorized by the trustees of said grantor to secure the payment of the bonds so authorized to be issued and the interest thereon:

Now, therefore, this indenture witnesses that the said grantor, for and in consideration of the premises and of the sum of one dollar to it duly paid by the said trustee at or before the ensembling and delivery of these presents, the receipt whereof is hereby acknowledged, and in order to secure equally the payment of the principal and interest of the bonds aforesaid, has granted, bargained, sold, aliened, released, conveyed and confirmed and by these presents does grant, bargain, sell, alien, remise, release, convey, confirm, assign, transfer and set over unto the said trustee, its successors and assigns, all of the property of the said grantor of every kind, real, personal, and mixed, wherever situated, and all the rights, privileges, franchises, immunities, income, and earnings owned or enjoyed by it, said property and property rights hereby intended to be conveyed being particularly described as follows, to wit: all those certain lots, pieces or parcels of land situate, lying and being in the county of Park and State of Montana, particularly described as follows, to wit: The north half of the southwest quarter and lots numbered one (1) and two (2) of section number fifteen (15), in township number nine (9) south of range number eight (8) east; containing one hundred and twenty-four and 79-100 (124.79) acres.

Also, all that certain lot, piece or parcel of land situate, lying and being in the city of Helena, in the county

of Lewis & Clarke, said State of Montana, particularly described as follows, to wit: Beginning at an iron pin at the intersection of the east side of Main street with the northerly boundary of the Montana Central Railway right of way in the city of Helena, Montana; thence north thirty-two (32) degrees fifty (50) seconds east two hundred and twenty-four and 3-10 (224.3) feet along the easterly side of Main Street to an iron pin; thence east two hundred and ninety-eight and 4-10 (298.4) feet to an iron pin; thence southwesterly three hundred and sixty-nine and 84-100 (369.84) feet to a stone monument; thence northwesterly three hundred and sixty-three and 1-10 (363.1) feet along the northerly boundary of the Montana Central Railway right of way to the place of beginning; all being in section number thirty (30), in township number ten (10) north of range number three (3) west.

Also all those certain lots, pieces or parcels of land situate, lying and being in Central Addition No. 3 and in the Amended Plan to Central Addition No. 3 to the city of Helena, in said county of Lewis & Clarke, particularly described as follows, to wit: Lots numbered twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), eighteen (18), and nineteen (19) in block number sixty-three; lots numbered thirteen (13), fourteen (14), fifteen (15), sixteen (16), and seventeen (17), and the south half of lot number twelve (12) in block number sixty-five (65); as said lots and blocks are numbered, designated and described on the plats of said Central Addition No. 3 and Amended Plan of Central

Addition No. 3 on file in the office of the county recorder of said county of Lewis & Clarke.

Also all that portion of lot number twenty (20) in said block number sixty-three (63), and all those portions of lots numbered one (1), two (2), three (3), four (4), five (5), six (6), seven (7), eight (8), nine (9), ten (10), eleven (11), twelve (12) and thirteen (13) in block number sixty-two (62), of said Central Addition No. 3, embraced within that certain tract described as follows, to wit: Beginning at a point three hundred and thirteen and 3-10 (313.3) feet south, twelve (12) degrees thirty (30) minutes west from the southeast corner of lot number thirty-seven (37) of section number nineteen (19), in township number ten (10) north of range number three (3) west, and running thence south twelve (12) degrees thirty (30) minutes west three hundred and thirteen and 5-10 (313.5) feet; thence east two hundred and seventy-eight (278) feet; thence north twelve (12) degrees thirty (30) minutes east three hundred and thirteen and 5-10 (313.5) feet; thence west two hundred and seventy-eight (278) feet to the place of beginning; said lots and blocks being as numbered, designated and described on said plat of said Central Addition No. 3.

Together with all and singular the grants made by the city of Helena, Montana, to McDonough & Co., and others of the right and privilege of manufacturing and selling gas throughout said city, and by said grantees duly assigned to the Helena Gas Light and Coke Company, and by the said Helena Gas Light and Coke Company duly assigned and transferred to the said grantor.

Also all that certain lot, piece, or parcel of land situate, lying and being in said city of Helena in the county of Lewis & Clarke, State of Montana, particularly described as follows, to wit: Beginning at a stake three (3) inches square from which the southeast corner of Government Lot number two (2) of section number thirty (30), in township number ten (10) north of range number three (3) west, bears south sixty-seven (67) degrees fifty (50) minutes east, six hundred and eighty-one and 8-10 (681.8) feet distant, and from said point of beginning running south eighty (80) degrees thirty (30) minutes, east one hundred and twenty-two and 15-100 (122.15) feet to a stake; thence north twenty (20) degrees sixteen (16) minutes east one hundred and fifty-one and 6-10 (151.6) feet to an iron pin; thence north sixty-nine (69) degrees forty-four (44) minutes west, one hundred and twenty (120) feet to a stake; thence south twenty (20) degrees sixteen (16) minutes west, one hundred and seventy-four and 2-10 (174.2) feet to the place of beginning; containing four hundred and forty-nine thousandths (.449) of an acre; said premises being bounded on the east by the right of way of the Montana Central Railway, and on the west by a street, and being the same premises conveyed to the Helena Electric Company by William A. Chessman and wife and Frank S. Getchell and wife by a deed dated June 23, 1890, and recorded in the office of the recorder of said county of Lewis & Clarke, State of Montana, on the second day of July, 1891, in book 28 of Deeds, page 175.

Also all those certain lots, pieces or parcels of land situated, lying and being in said city of Helena, in the

county of Lewis & Clarke, State of Montana, particularly described as follows, to wit: Beginning at a point in the southerly line of Cutler street, the corner between lots 54 and 55, block 2, Helena Townsite; thence running easterly along the northerly boundary line of said lot 55 eight feet; thence southerly on a line parallel with the easterly boundary line of said lot 54, said block 2, to a point on said line extended nine feet distant from the northerly boundary of lot 58, in said block 2; thence easterly to a point in the northerly boundary line of said lot 58, said block 2, thirty-three and five-tenths feet distant in an easterly direction along said northerly boundary line of said lot 58, said block 2, from the southeasterly corner of said lot 58, said block 2; thence easterly along the said northerly boundary line of said lot 58, said block 2, to the northeasterly corner thereof; thence in a southerly direction along the easterly boundary line of said lot 58, said block 2, to the southeasterly corner thereof; thence westerly along the southerly boundary line of said lot 58, said block 2, to the corner between lots 58 and 85, said block 2; thence along the southerly boundary line of said lot 85, said block 2, sixty-two and five-tenths feet; thence northeasterly to a point in the southerly boundary line of lot 53, said block 2, distant forty-seven feet from the point of intersection of the line parallel with said Cutler Street, and the boundary line between said lots 54 and 55, said block 2, extended one hundred feet distant from the point of beginning; thence northerly upon a direct line to the corner between lots 53 and 54, said block 2, thence

easterly along the northerly boundary line of said lot 54, said block 2, to the place of beginning, comprising all of lots 54 and 58 with parts of lots 53, 55, 56, and 85, block 2, Helena Townsite.

Also that other lot, piece or parcel of land situate in the Montana Central Addition, beginning at a point from which the S. E. corner of Government Lot number 2 of section number 30, in township number 10 north, range three west, bears south 49 degrees, 49' E. 724.64 feet distant; and from said point of beginning running S. 20 degrees, 16' W. 50 feet to the N. W. corner of the tract of ground heretofore sold by William A. Chessman and F. S. Getchell to the Helena Electric Company; thence south 69 degrees, 44' E. 120 feet to the N. E. corner of said tract as aforesaid sold to the said Helena Electric Company; thence N. 20 degrees, 16' E. 50 feet; thence N. 69 degrees, 44' west 120 feet to the place of beginning, containing an area of 6,000 square feet; said premises being bounded on the west by a street to be hereafter designated and to be by the said Chessman and Getchell dedicated to the public use as a highway.

Also that certain railway and franchise situate in said city of Helena, particularly described as follows, to wit:

Beginning at the carshed on Cutler Street; thence northerly over and along Main Street to Helena Avenue; thence over and along Helena Avenue to the right of way of the Northern Pacific Railway Company; thence westerly over and along such right of way to Roberts Street; thence over and along Roberts Street to Helena Avenue.

Also beginning at the intersection of Main Street and Sixth avenue; thence over and along Sixth avenue to Fuller avenue; thence over and along said Fuller avenue to the right of way of the Montana Central Railway Company; thence over and along such right of way to Kessler Street; thence over and along Kessler Street to Lyndale avenue; thence over and along Lyndale avenue to Benton avenue; thence over and along Benton avenue to Hollins avenue; thence westerly over and along Hollins avenue to Hotel Broadwater.

Also beginning at the intersection of Main Street and Placer Street; thence over and along Placer Street to Fuller avenue; thence over and along Fuller avenue to the Montana Central Passenger Depot.

Also beginning at the boundary line between Broadwater Hot Springs Hotel property and the premises of the late Dwight G. Goodell, in the southwest quarter of the southeast quarter of section twenty-two (22) in township ten (10) north, range four (4) west, thence in an easterly direction as said railroad is now constructed, to the westerly end of Knight Street, on the westerly city limits of said city of Helena; thence easterly along Knight Street to Benton avenue; thence southerly along Benton avenue to its intersection with Park avenue; thence southerly along Park avenue to Sixth avenue; thence easterly along Sixth avenue to Allen Street; thence northerly over and along Allen Street to Seventh avenue; thence southeasterly over and along Seventh avenue to Davis Street; thence northeasterly over and along Davis Street to Eight avenue; thence easterly over

and along Eight avenue to Idaho Street; thence north along Idaho Street to Livingston avenue; thence easterly along Livingston avenue to Roberts street; thence northerly along Roberts Street to Gallatin Street; thence easterly along Gallatin Street to Sanders Street; thence northerly along Sanders Street to the passenger depot of the Northern Pacific Railroad.

Also beginning at the intersection of Winne avenue and Fee Street, in the Lenox Addition to said city of Helena, running thence westerly along Winne avenue to Lamborn Street; thence northerly along Lamborn Street to Broadway; thence west on Broadway to Montana avenue; thence north on Montana avenue to Fifth avenue; thence west on Fifth avenue to Davis Street; thence northeasterly on Davis Street to Seventh avenue.

Also beginning on Park avenue at the intersection with Sixth avenue, running thence south on Park avenue to Clark Street; thence west on Clark Street to Meagher Street; thence north on Meagher Street to the alley south of the public school grounds; thence west on said alley to Harrison avenue; thence north on Harrison avenue to Flowerree Street; thence west on Flowerree Street to Hayes avenue; thence north on Hayes avenue to Knight Street, intersecting the railroad on Knight Street at the junction of said Hayes avenue and Knight Street.

Also beginning at the intersection of Main Street and Helena avenue, running thence northerly on Main Street to Chestnut avenue; thence easterly on Chestnut avenue to Villard avenue; thence north on Villard

avenue to Custer avenue and the City limits; thence west on Custer avenue to Winne Boulevard; thence north on Winne Boulevard to near the entrance of the Helena Cemetery grounds; thence east to a point in section five (5), township eleven (11) north range three (3) west, about three hundred and thirty (330) feet east of Montana avenue; thence north to the college grounds of the Wesleyan University.

Also the houses and all machinery, engines, dynamos, wires, railroad tracks and appliances therein contained, which are erected on the right of way of the Northern Pacific Railroad Company, near Main Street, in said city of Helena, upon the ground held by the said grantor under a lease from said Northern Pacific Railroad Company to the grantor, bearing date the first day of January, A. D. 1895.

It is the intention hereby to convey all property of every kind and character owned by the grantor, whether the same be particularly enumerated and described or not, including also all property owned by said grantor within the county of Lewis & Clarke, said State of Montana, whether situate within or without the corporate limits of said city of Helena.

Together with all and singular the franchises, grants, rights, easements and privileges now owned and enjoyed by the said grantor, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, and also all machinery, tanks, retorts, condensers, purifiers, holders, mains, surface pipes, meters, erections, structures, fix-

tures, engines, tools, scales, hose, manufactured and unmanufactured materials, coal, wood, and supplies of every kind on hand and stored by said grantor, and all dynamos, poles, wires, switches, rolling-stock, cars, motors, and other apparatus situate in the car-houses or round-houses along the lines or upon any of the line of said railways, or upon any of the property hereinabove described or adjacent thereto and all other property of every kind and character belonging to the said grantor whether described herein or not, and also all the estate, right, title, reversion and reversions, remainder and remainders, rents, issues, earnings, income and profits whatsoever, as well in law as in equity, of the said grantor of, in and to the said property and each and every part and parcel thereof.

To have and to hold all and singular the said premises, lands, franchises, privileges and personal property unto the said party of the second part, trustee as aforesaid, and to its successor and successors in said trust and its and their assigns in trust nevertheless under the terms hereof for the equal pro rata benefit and security of the person or persons, firm or firms, and bodies politic which shall become and be the lawful owners of the said bonds and coupons without any preference of one bond over another by reason of priority of issue or of any act or thing whatsoever.

For the further carrying into effect of this conveyance the grantor hereby appoints the trustee and its successors in the trust the attorneys of the grantor in its name and behalf to ask, demand and receive for the

grantor payment and delivery of any and all sums of money, notes, chattels, and effects assigned and transferred to the trustee by this indenture, and to give effectual releases and discharges in the name of the grantor to the party or parties making such payment and delivery, and for any or all of the purposes aforesaid or of this instrument the trustee may appoint attorney or attorneys, agent or agents, may from time to time revoke such appointment, may use the name of the grantor and jointly act in relation to the premises as it or they shall think best.

Article 1. Until default shall be made in the payment of the principal or interest of said bonds or any of them, or in the performance by the grantor of any of the covenants of the said bonds or coupons, or of this indenture, the said grantor shall possess, operate, maintain, and enjoy all the franchises, rights and property of every kind conveyed by this deed of trust and every part thereof with the appurtenances, and take and use the tolls, income, rents, issues and profits thereof in the same manner and with the same effect as if this indenture had not been made.

Article 2. If the said grantor shall well and truly pay the principal of said bonds and every one of them, and all interest thereon when the same shall become due and payable according to the meaning of these presents and of said bonds and coupons, and shall well and truly perform and keep each and all other its covenants, promises and agreements herein contained, then and thereupon all the estate, right, title, and interest of the

said trustee and its successor and successors in the trust hereby acquired shall cease and determine, otherwise this instrument shall remain in full force and effect. And whenever the bonds hereby secured shall be fully paid, principal and interest, and all of the things required of the grantor by these presents shall be well and truly performed and done, this indenture shall be discharged by the trustee or its successor or successors in the trust, and proper instruments of reconveyance to the grantor shall be executed to the grantor, its successors or assigns, if the grantor, its successors or assigns, so request in writing.

Article 3. If any default shall be made by the grantor in the payment of the interest on said bonds or any of them or any part thereof, or in the payment of the principal sum of said bonds, or any of them, or any part thereof when the same shall become due according to the tenor of said bonds and coupons and of this indenture, or if the grantor shall fail faithfully to observe and perform any of the requirements made of it by said bonds and coupons and by this indenture, and such default or failure shall continue for the space of sixty days after written notice thereof has been given by the trustee to the grantor, then and thereupon it shall be lawful for, but not obligatory upon, the said trustee to terminate and put an end to the possession of said premises by the said grantor and take possession of, operate and enjoy the said property hereinbefore described and the rents, issues, and profits thereof for the benefit of the bondholders, in which case the trustee shall be entitled to the

appointment of a receiver, having such powers and duties, and acting under such limitations, as the court making the appointment shall confer and impose; and the trustee may also, or instead of so doing, and with or without taking possession, treat the whole amount of the principal of said bonds, together with all accrued and unpaid interest, as immediately due and payable, and thereupon proceed to sell and dispose of, by one sale, or successively through several sales, all and singular the premises, property, rights, interests and franchises hereby conveyed and mortgaged or intended so to be, or such portion thereof as the trustee may deem necessary, at public auction in said city of Helena, upon such terms as to credits, partial credits and security for payment, as it may think proper or expedient, having first given public notice of the time and place of the sale or sales, by advertisement printed once a week for at least six successive weeks in some newspaper printed and published in said city of Helena, Montana, if any there be, and also twice a week for the said six weeks in some daily newspaper printed and published in said city of New York, and no other notice or demand whatsoever to or upon the grantor except the said sixty days written notice prior to the commencement of foreclosure proceedings shall be necessary. The trustee shall have the right to adjourn such sale or sales from time to time in its discretion, giving reasonable notice of each adjournment; and after so adjourning, to make the sale at the time and place to which the same may be adjourned. The trustee is hereby further authorized and empowered

in its own name or in the name of the grantor to make, execute, acknowledge and deliver to the purchaser or purchasers at such sales, good and sufficient deed or deeds of conveyance of the property so sold; and any sale made as aforesaid shall be a perpetual bar, both in law and equity against the grantor and all persons claiming by, through or under it from claiming the property, rights, interests, and franchises so sold or any interest therein. And for the purpose aforesaid, the trustee, and each of its successors in the trust are hereby constituted irrevocably the attorneys of the grantor. Out of the proceeds arising from such sale or sales the trustee shall first defray the expenses thereof (including its just and lawful charges for services and expenses and reasonable allowance for attorney and counsel fees), and refund any advances or expenses reasonably made or incurred by it in operating, maintaining or managing the property of the grantor while in possession, and all payments made for taxes, assessments, insurance and other proper charges upon said premises and property, the balance of said proceeds shall be paid over to and ratably among the parties holding said bonds and coupons so far as may be necessary to pay the amounts then due upon the same, including the principal and interest computed to the time of making payments; and if any of the said proceeds then remain the remainder shall be paid over to the grantor or assigns.

Article 4. And one or more of the bondholders or any person in his or their behalf may purchase the property or any part thereof at any sale made as aforesaid,

and the receipt of the trustee shall be a sufficient discharge to the purchaser or purchasers for his or their purchase money.

Article 5. The rights of entry and sale hereinabove granted are cumulative to the ordinary remedy by foreclosure in the courts or other legal or equitable remedies by judicial proceedings, and the trustee herein or its successor or successors in this trust, upon any default being made as aforesaid, may in its discretion and upon the written request of the holders of the majority in value of the said bonds then outstanding and unpaid, shall upon being properly indemnified institute judicial proceedings to foreclose this mortgage or deed of trust, and to protect the rights of the holders of the bonds secured hereby. And in case of suit or other foreclosure proceedings the said trustee shall be entitled to recover as a part of the costs of such suit or proceeding reasonable attorney's fees to be fixed and allowed by the Court, which fee shall not exceed ten per cent on the first one thousand dollars, three per cent on the second, third, fourth and fifth thousand dollars, and one per cent on the remainder of the amount that shall be found due and unpaid on the indebtedness hereby secured. The trustee is hereby given also the right to make such foreclosure upon all of the property at one time and in one proceeding or upon portions of it successively and in separate proceedings. And the grantor hereby waives any and all rights of sale and redemption, and all other exceptions, stays or privileges now or hereafter provided by the statutes of Montana. It is further agreed that the notice hereinabove provided to be given

to the grantor shall be given by mailing such notice, postage prepaid, addressed to the said grantor at Helena, Montana.

Article 6. Before proceeding to take possession of the mortgaged property or to foreclose this mortgage or deed of trust (whether the foreclosure be made by sale under said power or otherwise), the trustee shall have the right first to exact from the bondholders reasonable indemnity against loss and liability that may be incurred by it in so doing; and upon the tender such reasonable indemnity by the owner or owners of a majority of the bonds at that time outstanding and unpaid, whether such indemnity shall have been previously requested of them or not, it shall be the duty of the trustee, in case of a default on the part of the grantor, continuing for the above-mentioned space of sixty days after written notice as aforesaid, and not waived as hereinafter provided, to take such action, pursuant to the terms of this mortgage or deed of trust, as the owner or owners of a majority of the bonds tendering the indemnity may in writing request.

Article 7. No delay or omission by the trustee in exercising the rights and powers herein granted shall be held to exhaust or impair such rights and powers, or be construed as a waiver thereof; but it is hereby mutually agreed that the holder or holders of a majority in amount of the bonds outstanding at the time of any default as aforesaid on the part of the grantor, may, by an instrument in writing, at any time, whether before or after the institution of foreclosure proceedings waive or

instruct the trustee to waive, and such default, provided always that no such action on the part of the bondholders shall extend to or be taken to affect any subsequent default, or impair the rights resulting therefrom. The trustee agrees, on any default in the payment of interest on the said bonds, to give notice thereof as aforesaid in writing to the grantor on the written request of any bondholder; and also at any time on the written request of the holder of any of said bonds, to give written notice in manner aforesaid to the grantor of any such default under this indenture, as the person requesting such notice to be given shall allege to exist.

Article 8. The trustee shall be entitled to be reimbursed for all proper outlays, of whatever sort or nature, to be incurred by this trust, and to receive a reasonable compensation for any duties that it may at any time perform in the discharge of the same; and all such fees, commissions, compensations, and disbursements shall constitute a lien on the mortgaged property and premises. It shall not be liable or accountable for the acts, default, or negligence of any agent, or agents or attorney who may be appointed by it under or by virtue of or for the purposes of these presents to do any of the matters or things herein provided for, if such agent or agents, or attorney, be selected with reasonable care, or for anything whatsoever in connection with this trust except willful misconduct or gross negligence, and it shall not be personally liable for any debts contracted by it for damages to persons or property, or for salaries or nonfulfillment of contracts during any period while it shall manage the trust, property or premises upon entry

as aforesaid. It shall not be bound to recognize any person or party as a holder of any said bonds, nor to take any action at his request, unless his bond or bonds are submitted for its inspection, or his ownership thereof is otherwise shown to its satisfaction; and it may, if it so desires, require the bonds so submitted to be deposited with it and retained until it shall have completed the action requested by such bondholder.

Article 9. It is further agreed that in case of the resignation, removal, or withdrawal of said trustee from the office and duties of said trust, whether at its own request or by reason of its insolvency, or from any other cause, the grantor shall have the right to nominate and appoint a successor to the said office of trustee with the consent of the owners of a majority of the bonds hereinbefore described, at the time outstanding and unpaid; and in case of such appointment, all the estate, right, title and interest in and to said property hereinbefore described as subject to this conveyance, shall vest in said newly appointed trustee, upon his or its acceptance in writing of said trust, indorsed upon this indenture, without the necessity of any other or further conveyance. But nevertheless the grantor and the retiring trustee agree to make, execute and deliver to said newly appointed trustee any further proper conveyance or conveyances, for the purpose of vesting said estate in said newly appointed trustee, which they or either of them may be requested in writing by him or it to make, execute and deliver.

Article 10. The grantor agrees at all times on request to furnish the trustee a schedule showing with

reasonable detail the items of the estate, property and other things covered by the lien hereof or intended so to be; and the trustee shall have the power from time to time to release from the lien of this indenture any of the property embraced therein when in its judgment other property of equal value is substituted therefor and subjected to the lien hereof, so that such release shall not injure the security or rights of the bondholders. The grantor covenants and agrees that, having possession as aforesaid, it will diligently preserve the rights and franchises now or hereafter granted to or conferred upon it by the laws of said State of Montana, or by the ordinances or laws of any city, town or municipality wherein its business is or shall be conducted; that using and operating its gas plant, electric plant and railway plant as the same are now constructed and operated, or as the same may hereafter be constructed or extended, it will at all times maintain and preserve said plants and every part thereof, together with the rolling-stock, machinery, fixtures, appliances and appurtenances in thorough repair, working order and condition, and fully supplied with motive power and equipments; and that it will from time to time make all needful and proper repairs and replacements, so that the traffic and business of the grantor shall at all times be carried with safety and dispatch. And until default as aforesaid the grantor may sell, exchange or otherwise dispose of such materials, appliances, machinery, rolling-stock or other movable property as shall have become worn out, disused or undesirable, provided it renews the same or substitutes therefor other property which in the

judgment of the trustee is of equal or greater value, the trustee's assent to such sale, exchange or other disposition to be expressed in writing, but such assent shall not be required unless the property is over twenty-five hundred dollars in value. The grantor may from time to time, as it may deem best, abandon or take up undesirable or unused portions of its railway tracks, and lay additional tracks as may be authorized by the ordinances of the city of Helena, or by the grants and franchises under which said grantor is or may be operating, but no such change shall be made without the consent of the trustee, and in all new cases all new tracks that may be laid or extensions that may be made of any of the plants hereby mortgaged shall immediately become subject to the lien of this indenture the same to all intents and purposes as if originally described herein. In no event shall the trustee be held to any liability by reason of giving any release, assent or consent mentioned in this article unless such release, assent or consent shall be given fraudulently and corruptly.

Article 11. The grantor hereby expressly covenants and agrees to pay any and all taxes, assessments, and governmental charges assessed or laid upon the property hereby laid or intended so to be, and also to keep said premises and property (except the gasworks and appurtenances) at all times insured, in insurance companies approved by the trustee, in such sums as shall reasonably protect the insurable property, payable in case of loss to the trustee as its interest may appear. In case of loss the trustee shall allow the insurance

money so received to be applied by the grantor toward the replacement of the property destroyed or injured, if the grantor so requests in writing, and shall, after such request, pay such money over to the grantor for that purpose, on receipt of proper vouchers therefor; but if the grantor should not within sixty days from the loss request in writing to have the insurance money so applied, then it shall be invested by the trustee in good securities, and form part of the trust property hereby conveyed, and shall, together with all interest and accumulations thereon, be subject to the provisions of this indenture in like manner as the other property hereby conveyed, except that the possession thereof shall be held by said trustee until the securities provided by this indenture shall be enforced.

Article 12. The grantor covenants and agrees to cause this mortgage or deed of trust to be recorded as a mortgage both of real estate and personal property, in such manner as may be required by the laws of any State in which property now or hereafter embraced in this deed may be situated, so as to preserve and protect the rights of the bondholders and all parties thereto. The grantor also agrees hereafter, from time to time during the existence of this trust and mortgage, to make, execute, acknowledge and deliver all such further instruments and conveyances as, in the opinion of the legal counsel of the trustee, may be necessary to facilitate the execution of said trust, or to further secure the rights and remedies of the holders of said bonds.

Article 13. The bonds hereby secured or intended so to be shall as soon as may be, and as fast as the same

may be required for issue, be delivered to the trustee by the grantor for issue as herein provided, that is to say: the said bonds being first certified by the trustee shall, with the coupons belonging thereto, be by it re-delivered to the grantor upon the written order of the president or the grantor to the amount of four hundred and twenty-five thousand dollars thereof, to be used by the grantor in full payment for all property and rights heretofore purchased by said grantor from the Helena Gas Light and Coke Company, the Helena Electric Company, the Helena Rapid Transit Railroad and the owners of the Helena Electric Railway as follows: Two hundred and twenty-five of said bonds to the Helena Electric Company, one hundred of said bonds to the owners of the Helena Electric Railway, seventy-five of said bonds to the Helena Rapid Transit Railroad, and twenty-five of said bonds to the Montana National Bank. One hundred and seventy-five of said bonds shall be by the said trustee applied exclusively to the payment and discharge of the existing bonded indebtedness of the Helena Gas Light and Coke Company, as soon as said indebtedness shall mature. Said one hundred and seventy-five bonds, after being certified, shall remain in the hands of said trustee, subject to the right of the grantor to sell the same at any time on or before sixty days prior to the maturity of said bonded indebtedness of the Helena Gas Light and Coke Company, and if so sold the proceeds thereof to be paid to the said trustee for application as above provided, it being understood that the grantor or the purchaser of said bonds shall not be entitled to a delivery of said bonds until the full face value

of the same shall be paid into the hands of the said trustee. If said grantor shall not sell said bonds on or before sixty days prior to the maturity of said bonded indebtedness of the Helena Gas Light and Coke Company, then the said trustee shall be and is hereby authorized to sell the said one hundred and seventy-five bonds at a price not less than eighty-five cents on the dollar of the face value thereof, and apply the proceeds as aforesaid. In case of a sale of the said one hundred and seventy-five bonds as herein authorized, if the proceeds thereof shall not be sufficient to pay said indebtedness of the Helena Gas Light and Coke Company in full, the deficiency shall be paid by the grantor, and the grantor hereby agrees to pay the same. An exchange of said one hundred and seventy-five bonds, or any thereof, for the bonds of said Helena Gas Light and Coke Company, bond for bond, shall be taken and held to be equivalent to a sale of the bonds so exchanged. Each of the said bonds of the said Helena Gas Light and Coke Company, as soon as paid or exchanged, shall be canceled. The remaining four hundred of said bonds to be held by said trustee for the benefit of the grantor and to be surrendered and delivered to the executive officers (being the president and secretary) of the grantor whenever such officers shall file with said trustee satisfactory proof of expenditures for betterments—that is to say, any one or more of said four hundred bonds shall be surrendered to the grantor by said trustee whenever proof is furnished of the expenditure for betterments of a sum equal to the face of said bond or bonds so to be surrendered. Such satisfactory proof of ex-

penditures for betterments may consist of the affidavit of the president and secretary as to such expenditures, accompanied by a brief statement showing for what purposes such expenditures have been made.

Article 14. The grantor agrees that beginning with the eleventh year of the terms for which said bonds run it will pay into the hands of the trustee, as a sinking fund to provide for the payment of said bonds, twenty-five per cent of the net earnings of the grantor each year, and the amount so paid to the trustee as a sinking fund shall be by the said trustee invested in some safe investment at the best rate of interest that the said trustee can obtain, and shall be so invested as to be available for the payment of said bonds at the maturity thereof.

Article 15. The term "trustee," as employed in this instrument, shall be taken to mean the trustee hereunder for the time being, whether said party of the second part, or its successor or successors in said trust.

In witness whereof, the said party of the first part has caused these presents to be signed by its president and attested by its secretary, and its corporate seal to be affixed hereunto the day and year herein first above written.

HELENA POWER AND LIGHT COMPANY.

By HENRY M. PARCHEN,
President.

[Seal] Attest: HARRY L. WALKER,
Secretary.

Signed and sealed in presence of:

J. MILLER SMITH.

State of Montana,
County of Lewis & Clarke. } ss.

Henry M. Parchen, president of the Helena Power and Light Company, the mortgagor named in the foregoing mortgage, being duly sworn, says: That the said mortgage is made in good faith to secure the amount named therein, and without any design to hinder or delay the creditors of the mortgagor named in said mortgage; and the said Henry M. Parchen, on his said oath, further says that he is the president of the said Helena Power and Light Company.

HENRY M. PARCHEN.

Subscribed and sworn to before me this twenty-sixth day of January, A. D. 1895.

[Seal]

J. MILLER SMITH,
Notary Public.

State of Montana,
County of Lewis & Clarke. } ss.

On this twenty-sixth day of January, A. D. one thousand eight hundred and ninety-five, personally appeared before me J. Miller Smith, a notary public in and for said county of Lewis & Clarke, Henry M. Parchen, and Harry L. Walker, president and secretary, respectively, of the Helena Power and Light Company, to me personally known to be the individuals whose names are subscribed to the foregoing instrument as the president and secretary, respectively, of the Helena Power and Light Company, and they each of them acknowledge to me that they executed the same respectively as the presi-

dent and secretary of said company, for and on behalf and in the name of said company, as its free and voluntary act and deed, for the uses and purposes therein mentioned, and in pursuance of the order and resolution of said company directing such instrument to be executed, by signing the same as president and secretary thereof, and affixing thereto its corporate seal.

In witness thereof, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

J. MILLER SMITH,
Notary Public.

State of New York,
City and County of New York. } ss.

E. Francis Hyde, second vice-president of the Central Trust Company of New York, the mortgagor named in the foregoing mortgage, being duly sworn, says: That the said mortgage is made in good faith to secure the amount named therein, and without any design to hinder or delay the creditors of the mortgagor named in said mortgage; and the said E. Francis Hyde, on his said oath, further says that he is the second vice-president of said Central Trust Company of New York.

E. FRANCIS HYDE.

Subscribed and sworn to before me this second day of May, A. D. 1895.

[Seal]

FRANK B. SMIDT,
Notary Public N. Y. Co.

State of Montana,
 County of Lewis & Clarke. } ss.

I hereby certify that the within instrument was filed in my office on the 7th day of May, A. D. 1895, at 57 min. past 2 o'clock P. M., and recorded on page 405 of Book 12 of Mortgages, records of Lewis & Clarke County, State of Montana.

J. S. TOOKER,
 County Recorder.
 By Fred S. Yaeger,
 Deputy.

Fees, \$14.70.

[Endorsed]: Title of Court and Cause. Bill of Complaint. Filed and entered Oct. 15, 1901. Geo. W. Sproule, Clerk.



And thereafter, to wit, on the 18th day of October, 1901, a subpoena in equity was duly issued, which subpoena is in the words and figures as follows, to wit:

Subpoena.

UNITED STATES OF AMERICA.

*Circuit Court of the United States, Ninth Judicial Circuit,
 District of Montana.*

IN EQUITY.

The President of the United States of America, Greeting, to The Helena Power and Light Company and John W. Warren, Defendants:

You are hereby commanded that you be and appear in said Circuit Court of the United States aforesaid, at the courtroom in Helena, on the 2d day of December, A. D. 1901, to answer a bill of complaint exhibited against you in said Court by Central Trust Company of New York, complainant, who is a citizen of the State of New York, and to do and receive what the said Court shall have considered in that behalf. And this you are not to omit, under the penalty of five thousand dollars.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the United States, this 18th day of October, in the year of our Lord one thousand nine hundred and one, and of our Independence the 126th.

GEO. W. SPROULE,
Clerk.

Memorandum Pursuant to Rule 12, Supreme Court U. S.

You are hereby required to enter your appearance in the above suit, on or before the first Monday of December next, at the clerk's office of said court, pursuant to said bill; otherwise the said bill will be taken pro confesso.

[Seal]

GEO. W. SPROULE,
Clerk.

BUTLER, NOTMAN, JOLINE and MYNDERSE,
Solicitors for Complainant.

McINTIRE & McINTIRE,
New York and Helena, Montana.

United States Marshal's Office, }
District of Montana. }

I hereby certify that I received the within writ on the 18th day of October, 1901, and personally served the same on the 18th and 21st days of October, 1901, on the Helena Power and Light Company, by delivering to and leaving with T. A. Marlow, president of the Helena Power and Light Company, on the 18th day of October, 1901, and John W. Warren on the 21st day of October, 1901, said defendants named therein, personally, at Helena, in the county of Lewis and Clarke, in said District, a copy thereof.

Helena, October 22d, 1901.

J. P. WOOLMAN,
United States Marshal.

[Endorsed]: Title of Court and Cause. Subpoena in Equity. Filed and entered Oct. 22, 1901. Geo. W. Sproule, Clerk. By Fred H. Drake, Deputy.

And thereafter, to wit, on the 2d day of December, 1901, the answer of defendant John W Warren was filed herein, which answer is in the words and figures as follows, to wit:

In the Circuit Court of the United States, for the District of Montana.

CENTRAL TRUST COMPANY OF
NEW YORK,

Complainant,

vs.

HELENA POWER AND LIGHT COM-
PANY and JOHN W. WARREN,

Defendants.

Answer of John W. Warren.

The above-named defendant, John W. Warren, for answer to the bill of complaint herein, avers that heretofore, to wit, on the 4th day of June, 1901, in an action pending in the District Court of the First Judicial District of the State of Montana, in and for the County of Lewis and Clarke, wherein this answering defendant, John W. Warren, was the plaintiff and defendant herein, Helena Power and Light Company, was the defendant, judgment was by the said Court duly made, given and rendered in favor of the plaintiff herein, this answering defendant, John W. Warren, and against the said Helena Power and Light Company, defendant therein, for the sum of \$2,500, together with costs amounting to \$134.80, and that no part of the said judgment has

ever been paid, and that the whole thereof, together with interest at the rate of 8 per cent per annum now remains due and unpaid.

2. This answering defendant further avers that on said 4th day of June, 1901, the said judgment was duly docketed in the office of the clerk of the said District Court of the First Judicial District of the State of Montana, in and for the County of Lewis and Clarke, and still remains so docketed.

3. This answering defendant further avers that the said action was begun by this answering defendant in the said District Court on or about the 27th day of October, 1900, and that thereafter the said defendant Helena Power and Light Company appeared therein and filed its answer, and that immediately prior to the rendition of judgment therein, as hereinbefore averred, both parties appearing, the case was tried before a jury, which said jury returned a verdict in favor of the plaintiff for the said sum of \$2,500, upon which verdict judgment was entered as aforesaid.

4. This answering defendant further avers that the defendant Helena Power and Light Company is, and at all times since on or about the 1st day of January, 1895, and down to the time of the filing of the complaint herein has been, engaged in operating lines of street railway in and over the streets of the city of Helena, Lewis and Clarke County, Montana, and in furnishing electric and gas lighting to the said city of Helena and the inhabitants thereof, the electric lighting being furnished by means of wires strung through the streets of the said city of Helena, and the gas through pipes and mains

laid through the streets of the said city of Helena, and that the said defendant Helena Power and Light Company has so and for such purposes occupied the said streets and conducted the said business under franchises to it granted by the said city of Helena under authority of acts of the legislature of the State of Montana, and under franchises granted by virtue of the general laws of the State of Montana.

5. And this answering defendant further avers that all of such franchises were granted to the said defendant Helena Power and Light Company since the year 1889, and that none of them were granted to or exercised by it prior to said year 1889.

6. This answering defendant further avers that all the property mentioned in the mortgage attached to the bill of complaint herein was at the time of the commencement of this action, and at all times had been, held by it, so long as it held the same, under such franchises so as aforesaid to it granted.

7. This answering defendant further avers that the liability of said Helena Power and Light Company to this answering defendant, which was the foundation of the judgment above referred to, recovered by this answering defendant against the said Helena Power and Light Company, was incurred by the said Helena Power and Light Company in the operation, use and enjoyment of the franchises hereinbefore referred to as granted to it by the said city of Helena, and that the facts constituting the said liability are set out in the complaint of this answering defendant in the action hereinbefore referred to, in which said judgment was rendered, a copy,

of which complaint is hereto attached, marked exhibit "A," and by this reference made a part of this answer.

8. This answering defendant denies that the defendant Helena Power and Light Company was or could be authorized or empowered to execute or deliver any mortgage of the property mentioned in the complaint, the lien of which is or could be superior to the lien of this answering defendant's judgment; and this answering defendant denies that the lien of this defendant's said judgment is subsequent or inferior to the lien of the mortgage or deed of trust referred to in the bill of complaint.

Wherefore, this answering defendant consents to an immediate sale of the property of the said defendant Helena Power and Light Company, as prayed for in the complaint, but respectfully prays that his said judgment may be adjudged to be a lien upon the property of the said defendant company within the county of Lewis and Clarke, State of Montana, superior to the lien of the complainant's mortgage, and that it be decreed that out of the proceeds of the sale of the said property of the said defendant company the amount of the judgment of this answering defendant be first paid, together with his costs herein, and that this answering defendant have such other and further relief as to the Court may seem just.

R. R. PURCELL and

T. J. WALSH,

Solicitors for Answering Defendant.

T. J. WALSH,

Counsel for Answering Defendant.

Personal service of the foregoing answer this 30th day of November, A. D. 1901, hereby admitted.

H. G. and S. H. McINTIRE,
Solicitors for Plaintiff.

Exhibit "A."

(To Answer of John W. Warren.)

In the District Court of the First Judicial District of the State of Montana, in and for the County of Lewis and Clarke.

JOHN W. WARREN,

Plaintiff,

vs.

HELENA POWER AND LIGHT COM-
PANY (a Corporation),

Defendant.

Complaint.

The plaintiff above named complains to the Court, and alleges:

I.

That the defendant is, and at all times hereinafter mentioned was, a corporation organized and existing under and by virtue of the laws of the State of Montana, and during all of said time was, and still is, the owner of, and in the possession of, a certain street railway road, which is run and operated by the defendant along and upon Helena Avenue in the city of Helena, county of Lewis and Clarke, State of Montana, and other streets of said city, together with the track, rolling-stock and appurtenances thereunto belonging.

II.

That the said defendant's line of road passes along said Helena Avenue at the intersection of said Helena Avenue with Rodney Street, so-called, which said Helena Avenue and said Rodney Street are, and at all said times were, public highways of said city of Helena.

III.

That on or about the 15th day of August, 1900, in the said city of Helena, Lewis & Clarke County, Montana, plaintiff was traveling in a lumber wagon, drawn by two horses, upon said Helena Avenue, and while so traveling along said Helena Avenue, at a point about four hundred feet northeast of the intersection of said Rodney Street with said Helena Avenue, or on said Helena Avenue, plaintiff's wagon was struck by one of defendant's cars, then being negligently propelled over its said line of road by the said defendant, in consequence whereof said plaintiff was violently thrown from the seat, which he then occupied in said wagon, to the bottom thereof, with such force that he was seriously and permanently injured, his left shoulder was bruised and sprained and his breast and back were bruised and injured, by reason of which he was made sick, sore and lame.

IV.

That by reason of such injuries, plaintiff since said time has been unable to do or perform any work of any kind, and has suffered damages in the sum of five thousand dollars (\$5,000).

V.

That the car which caused the injuries to plaintiff was not one which ran on schedule time, and at said time and place was being run at a negligently high and dangerous rate of speed, to wit, about twenty miles per hour, and that on approaching plaintiff as aforesaid, defendant's servants in charge of said car negligently failed to give any signal whatever of its approach, as it was their duty to do, by reason of which omission and the high and dangerous rate of speed at which such car was propelled, plaintiff was unable to get out of the way of the same, and was struck by it, as aforesaid.

Wherefore plaintiff demands judgment in the sum of five thousand dollars (\$5,000), and his costs herein.

R. R. PURCELL and
T. J. WALSH,
Attorneys for Plaintiff.

State of Montana,)
County of Lewis & Clarke.) ss.

John W. Warren, being duly sworn, deposes and says: That he is the plaintiff in the above-entitled cause; that he has read the foregoing complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated on information and belief, and as to such he believes it to be true.

JOHN W. WARREN.

Subscribed and sworn to before me this 29th day of October, 1900.

R. R. PURCELL,
Notary Public in and for Lewis & Clarke County, Montana.

[Endorsed]: Title of Court and Cause. Answer. Filed and entered Dec. 2, 1901. Geo. W. Sproule, Clerk.

And thereafter, to wit, on the 3d day of December, 1901, an order pro confesso was entered herein, which said order is in the words and figures as follows, to wit:

In the Circuit Court of the United States, Ninth Judicial Circuit, District of Montana.

CENTRAL TRUST COMPANY,	}
Complainant,	
vs.	
THE HELENA POWER AND LIGHT COMPANY and JOHN W. WARREN,	}
Defendants.	

Order Pro Confesso.

The appearance of the above-named defendant, The Helena Power and Light Company, having been duly made and filed herein upon the 15th day of October, 1901, and a rule day having passed since its said appearance, and the said defendant, The Helena Power and Light Company, having failed to answer, demur or

enter any plea to complainant's bill within the time limited by the rules and practice of this Court, on motion of Messrs. Butler, Notman, Joline and Mynderse and H. G. and S. H. McIntire, solicitors for complainant, it is ordered that the bill of complaint herein filed be, and the same is hereby, taken as confessed as to said defendant, the Helena Power and Light Company.

BUTLER, NOTMAN, JOLINE and MYNDERSE,
H. G. and S. H. McINTIRE,
Solicitors and of Counsel for Complainant.

Entered this 3d day of December, 1901.

And thereafter, to wit, on the 27th day of December, 1901, a motion for decree was filed herein, which said motion is in the words and figures as follows, to wit:

*In the Circuit Court of the United States, Ninth Circuit,
District of Montana.*

CENTRAL TRUST COMPANY,	}
Complainant,	
vs.	}
HELENA POWER AND LIGHT COM-	
PANY and JOHN W. WARREN,	
Defendants.	

Motion for Decree.

Comes now the above-named complainant and moves the Court that notwithstanding and despite the answer of the defendant John W. Warren herein, that decree be rendered herein in favor of complainant, as prayed for in the bill of complaint herein.

This motion is made upon the bill of complaint and the answer of said defendant Warren.

BUTLER, NOTMAN, JOLINE and MYNDERSE,
H. G. and S. H. McINTIRE,

Solicitors for Complainant.

H. G. McINTIRE,
Of Counsel.

To R. R. Purcell and T. J. Walsh, Solicitors for Defendant John W. Warren:

You will take notice that on Monday, the 6th day of January, 1902, at the opening of court on that day, or as soon thereafter as counsel can be heard, we shall move the Court for a decree in pursuance of the prayer of the bill of complaint herein, notwithstanding the answer of the defendant John W. Warren, and that said motion will be based upon the bill and the answer of said Warren and the motion, copy of which is herewith served on you.

Helena, December 27th, 1901.

BUTLER, NOTMAN, JOLINE and MYNDERSE,
H. G. and S. H. McINTIRE,

Solicitors for Complainant.

Service of copy of the foregoing on us this 27th day of December, 1901, is hereby admitted.

T. J. WALSH and
R. R. PURCELL,

Solicitors for Defendant John W. Warren.

[Endorsed]: Title of Court and Cause. Motion. Filed and entered Dec. 27th, 1901. Geo. W. Sproule, Clerk.

And thereafter, to wit, on the 3d day of March, 1902, an order was duly made and entered, which said order is in the words and figures as follows, to wit:

67th Day of November Term, 1901, U. S. Circuit Court.
District of Montana, Monday, the third day of March,
1902.

CENTRAL TRUST COMPANY OF NEW YORK (a Corporation),	}	No. 631.
vs.		
HELENA POWER AND LIGHT COM- PANY and JOHN W. WARREN,	}	

Order Denying Petition, etc.

This cause heretofore submitted to the Court upon the petition of E. T. Wilson, as receiver of the First National Bank of Helena, Montana, A. J. Davis, as trustee for the First National Bank of Butte, Montana, and William A. Clark for leave to intervene as defendants and answer the bill of complaint, and, after due consideration, it is ordered that said petition be, and the same hereby is, denied.

And said cause also came on at this time for the decision of the Court on motion of complainant for a judgment herein on the complaint and answer of J. W. Warren declaring the claim of said defendant J. W. Warren to be a subsequent lien to the lien of said mortgage or deed of trust of complainant, and after due consideration it is ordered that said motion be, and the same hereby is, denied.

And thereafter, to wit, on the 8th day of April, 1902, a final decree was made and entered herein, which said decree is in the words and figures as follows, to wit:

*In the Circuit Court of the United States, Ninth Circuit,
District of Montana.*

IN EQUITY.

CENTRAL TRUST COMPANY OF	}
NEW YORK,	
	Complainant,
vs.	
HELENA POWER AND LIGHT COM-	}
PANY and JOHN W. WARREN,	
	Defendants.

Decree.

This case came on to be heard at this term on the bill of complaint of the Central Trust Company of New York and the exhibit thereunto annexed, the same being confessed by the defendant, the Helena Power and Light Company, and an order pro confesso against said defendant having been duly entered herein on December 3, 1901, and the answer of the defendant Warren, and upon the proceedings had in this cause, and was argued by counsel, and thereupon upon consideration thereof and upon motion of the complainant, Central Trust Company of New York, by its solicitors, it is found by the Court and ordered, adjudged and decreed as follows:

I. The Court finds the material allegations of the bill of complaint of the Central Trust Company of New York true.

II. On and prior to the 1st day of January, 1895, the Helena Power and Light Company (hereinafter for brevity called the Helena Company) was, and still is, a corporation duly created and existing under and pursuant to the laws of the State of Montana, and was and is fully authorized and empowered to own the property hereinafter described and to engage in the business for which it was formed, and to execute and deliver the bonds and mortgage hereinafter mentioned, and John W. Warren was at the time of the filing of this bill a resident and citizen of the State of Montana.

III. Complainant was at the times hereinafter mentioned, and now is, a corporation created and existing under the laws of the State of New York, and bearing the corporate name of Central Trust Company of New York, and at all times hereinafter mentioned was, and now is, duly authorized and empowered under the terms of its charter to take and hold in trust the property transferred and conveyed to it in trust as hereinafter stated, and to execute and perform the trusts imposed upon it under and by virtue of the mortgage or deed of trust hereinafter described.

IV. On or about the 1st day of January, 1895, the defendant Helena company did, by a resolution duly passed at a meeting of the trustees, duly authorize and direct the issue of 1,000 coupon bonds of one thousand dollars (\$1,000) each, bearing interest at 5 per cent per annum,

numbered consecutively from 1 to 1,000, both inclusive, and to secure the payment of the interest and principal of all of said bonds equally and ratably without priority or distinction, irrespective of the date of the issue of same by mortgage or deed of trust to complainant, as trustee, upon all the property and franchises of the Helena company. In pursuance of such resolution and determination and in the exercise of its lawful corporate powers, and due corporate action having first been had, said defendant Helena company made and executed all of these said bonds for \$1,000 each, by each of which for value received it promised to pay to the bearer, on the 1st day of January, 1925, at the office of complainant in the city of New York, the sum of \$1,000 in gold coin of the United States of America, with interest thereon at the rate of 5 per cent per annum, payable in like gold coin, on the 1st day of January and on the 1st day of July in each year, at the office of complainant, upon presentation and surrender of the coupons thereto annexed, as they severally should become due, until such principal sum should be fully paid.

V. On or about the 1st day of January, 1895, said defendant Helena Company, in pursuance of the resolution and determination above mentioned, and in the due exercise of its corporate power, and due corporation action having first been had, in order to secure the payment of the bonds authorized to be issued and the interest thereon as the same should be payable, according to the tenor of said bonds and the coupons thereto attached, made, executed and delivered to complainant a

certain mortgage, or deed of trust, bearing date January 1, 1895, and therein and thereby granted bargained, sold, aliened, released, conveyed and confirmed unto complainant its successors and assigns, certain premises and property described in said mortgage.

To have and to hold all and singular the said premises, lands, franchises, privileges and personal property conveyed by the said mortgage to complainant and to its successor and successors in said trust, to its and their assigns in trust under the terms of said mortgage for the equal pro rata benefit and security of the person or persons, firm or firms and bodies politic which should become and be the lawful owners of said bonds and coupons, without preference to one bond over another by reason of the priority of issue, or of any act or thing whatsoever.

VI. Said mortgage or deed of trust was authorized, made, and executed and delivered in all respects in conformity with law, and was duly recorded in the office of the county recorder of the State of Montana for the county of Lewis & Clarke, May 7th, 1895, at 57 minutes past 2 o'clock P. M., on page 405 of Book 12 of Mortgages.

Complainant duly accepted the trust created in and by said mortgage or deed of trust before the recording of the same as aforesaid.

VII. That the said mortgage or deed of trust set forth in the bill of complaint herein of the complainant, Central Trust Company of New York, made by the defendant Helena company to said complainant and bearing date January 1, 1895, is a valid and subsisting mort-

gage, and constitutes a valid and subsisting lien upon the mortgaged property, premises, and franchises, subsequent only to the lien of the judgment of the defendant John W. Warren upon the real estate as follows:

[Printing of description omitted by stipulation of counsel.]

VIII. That 425 of the bonds above mentioned, issued under and secured by said mortgage or deed of trust so made and executed as aforesaid, were duly authenticated by the indorsement thereon of the certificate of complainant as provided in said bonds and mortgage, and so authenticated were duly delivered by it, and all of said 425 bonds have been duly issued, negotiated, and sold to divers persons, who have thereby become bona fide owners thereof as purchasers for value, and all are now outstanding and valid and bonding obligations of the defendant Helena company. .

That in and by the terms of the mortgage securing the same it was provided that one hundred and seventy-five of said bonds should be applied exclusively to the payment and discharge of the existing bonded indebtedness of the Helena Gas Light and Coke Company as soon as said indebtedness should mature, and that said one hundred and seventy-five bonds after being certified should remain in the hands of complainant, subject to the right of the Helena company to sell the same at any time on or before sixty days prior to the maturity of said bonded indebtedness of the Helena Gas Light and Coke Company, and if sold the proceeds thereof to be paid to complainant for application as provided above,

it being understood that the purchaser of said bonds should not be entitled to delivery of the same until the full face value had been paid into the hands of complainant. That the said one hundred and seventy-five bonds are now in the possession of complainant pursuant to the provision above set forth, and have not been sold or delivered, and are held by complainant subject to the provision of said mortgage.

IX. The defendant Helena company made default in the payment on the 1st day of July, 1899, of the installment of interest due on the day on all of said bonds issued and outstanding as aforesaid, and secured by the said mortgage to complainant, and the said default still continues.

Demand was duly made for the payment of said installment of interest due upon said bonds July 1, 1899, as aforesaid, and that the coupons representing such installment of interest, or many thereof, were duly presented for payment and payment thereof duly demanded, but that payment of said installment of interest and of said coupons was refused, and that neither on said 1st day of July, 1899, nor at any time since has the defendant Helena company, or anyone else in its behalf, provided at the office of complainant, or elsewhere, any funds with which to pay the said installment of interest of any part thereof, and no part of said installment of interest has been paid by said defendant Helena company, or by any other person or corporation, and that the whole of said installment of interest remains due and unpaid.

The defendant Helena company has likewise made default in the payment of installments of interest which fell due January 1, 1900, July 1, 1900, January 1, 1901, and July 1, 1901, upon all the bonds issued and outstanding as aforesaid, and that such default still continues, though due demand was made for payment of said installments of interest due upon said days above set forth.

X. That on or about the 6th day of August, 1901, complainant gave notice in writing to the defendant Helena company of the defaults above set forth, and that pursuant to the terms of article fifth of said mortgage or deed of trust it elected to treat the whole amount of the principal of the bonds secured by said mortgage or deed of trust as forthwith due and payable, such determination, election and notice on behalf of complainant were evidenced by a written notice thereof enclosed in a securely closed post-paid wrapper directed to the defendant Helena Company as follows:

“Helena Power and Light Company, Helena, Montana.”

That said notice was duly received and retained by said Helena Company.

The claim of the defendant John W. Warren is a lien upon said real property of the Helena Company, prior to the lien of said mortgage or deed of trust.

XI. That the defendant Helena Company is insolvent and wholly unable to pay its debts and obligations, and that the property and premises covered by said mortgage are of a value less in amount than the amount

of the bonds issued hereunder, and that said mortgaged property and premises are and constitute an inadequate security for the payment of the said bonds.

XII. The amount due on said 425 bonds secured by said mortgage dated January 1st, 1895, which is in default, and which is now due and payable, is as follows:

Interest due July 1, 1899.....	\$10,625.00
Interest thereon to date of this decree.....	2,351.63
Interest due January 1, 1900.....	10,625.00
Interest thereon to date of this decree.....	1,926.65
Interest due July 1, 1900.....	10,625.00
Interest thereon to date of this decree.....	1,501.67
Interest due January 1, 1901.....	10,625.00
Interest thereon to date of this decree.....	1,076.69
Interest due July 1, 1901.....	10,625.00
Interest thereon to date of this decree.....	651.71
Principal of bonds outstanding	425,000.00
Interest thereon from July 1, 1901, to date of this decree.....	16,291.65
	\$501,925.00

That the 175 bonds provided in and by the said mortgage to be applied exclusively to the payment and discharge of the existing bonded indebtedness of the Helena Gas Light and Coke Company have not been issued, and are not outstanding obligations of the defendant Helena company, and the said bonds are not entitled to share in the distribution of the proceeds resulting from the sale of the mortgaged premises herein directed, and complainant, the Central Trust Company of New York, is hereby directed to cancel the said 175 bonds.

XIII. That the defendant Helena Power and Light Company shall, within ten days after the entry of this decree, pay, or cause to be paid, to complainant, or to the clerk of this Court, the said sum of \$501,925.00, with interest thereon from the date of the entry of this decree to the date of payment, being the sum adjudged to be due and payable by said defendant and secured by said mortgage dated January 1, 1895, together with the costs, counsel fees and disbursements herein incurred and allowed by the Court, and that unless said payment as hereinbefore directed shall be made within time aforesaid said mortgage be foreclosed, and all property, rights and interest conveyed thereby, and upon which said mortgage is a lien as the property is hereinbefore particularly described be sold as hereinafter directed, and that under and by said sale all equity of redemption of the defendant Helena company, and of any and all persons claiming by, through or under said defendant, of, in and to said mortgaged premises, property, rights and franchises be foreclosed and cut off and forever barred.

XIV. That the property covered by said mortgage consists of one single system and plant, and cannot be sold in separate parcels without injury to the rights of creditors, and all the parties in interest.

XV. That the property covered by said mortgage dated January 1, 1895, shall be subject to the provisions aforesaid, and in default of the sums hereinbefore found to be due and directed to be paid, be sold without valuation, appraisement or redemption, at public auction to the highest bidder or bidders on the mortgaged prem-

ises at the street-car barn at the head of Main street, in the city of Helena, Montana, on a day and hour to be fixed by the Special Master Commissioner herein appointed.

In his advertisement of sale, such day and hour to be fixed in accordance with the request of the solicitors for the complainant and previous notice of the time, place and terms of sale shall be given by publication of a brief general advertisement referring to this decree for further particulars, and for a more specific description of the property herein ordered to be sold, which advertisement shall be published at least once in each week for a term of four weeks preceding the date of the sale in one newspaper of general circulation published in the city of Helena, Montana, and by posting such notices in at least three public places in said city of Helena.

The said Special Master Commissioner may at the request of the complainant, or at the request of the solicitors for complainant, adjourn or postpone said sale, and may, without further notice or advertisement, proceed with said sale on any day to which the said sale may have been thus adjourned. The Special Master Commissioner may give such further notice of sale in addition to the notice before prescribed as he may think proper, or as said complainant may request. The complainant, or any holder or holders of bonds secured by said mortgage of January 1, 1895, may bid and purchase at said sale.

XVI. Said Special Master Commissioner shall offer for sale the entire property covered by said mortgage of January 1, 1895, as one parcel, without valuation, ap-

praisement or redemption, and shall accept no bid for said property so offered for sale from any bidder for a sum less than \$200,000.00, nor from any bidder who shall not place in his hands or deposit with him at the time of making the bid as a pledge that said bidder shall make good his bid if accepted by the Court the sum of \$15,000.00 in money, or certified check upon any national bank, or upon any trust company in the city of New York, or \$30,000.00 par value of bonds secured by said mortgage of January 1, 1895.

XVII. That of the price for which said property shall be sold, there shall be paid in cash at the time of sale the cash deposit hereinbefore required, which shall be received as a part of the purchase price, and also from time to time thereafter such further portion of said purchase price shall be paid in cash as the Court may direct in order to meet the expenses of this suit, and to pay such claim, if any, against the mortgaged property as the Court may adjudge to be prior in equity to said mortgage. All sums of money received by said Special Master Commissioner shall be paid by him into the registry of the court. The certificate of any trust company in the city of New York that it holds bonds as therein described, subject to the order of the party named and transferred to the Special Master Commissioner, shall by him be received and accepted in lieu of bonds as a deposit at the time of sale, and on account of the payment of the purchase price bid with like force and effect as though the bonds therein mentioned had been delivered to him.

The Court reserves the right to reject any bid, and to

resell said premises and property upon the failure of any purchaser for twenty days to comply with any order of the Court requiring payment.

The balance of the purchase price not required to be paid in cash may be paid in cash, or the purchaser may satisfy and make good the balance of his bid in whole or in part, by paying over and surrendering outstanding bonds and overdue coupons appertaining thereto, secured by said mortgage dated January 1, 1895, said bonds and coupons being received at such price or value as shall be entitled to receive thereon in case the entire purchase price were paid in cash. All such bonds and coupons that may be used to make such payment shall be surrendered to the Special Master Commissioner and canceled, if the whole amount due thereon is applied upon the purchase price, but if less than the whole amount applied then the amount so applied shall be stamped or written upon said bonds or coupons, which shall then be returned to the holder.

As soon as any sale shall have been made by the Special Master Commissioner in pursuance of this decree, he shall report the same to this Court for confirmation, further certifying to the Court the compliance by the purchaser or purchasers with the conditions of sale as hereinbefore prescribed. If any bid shall be accepted by the Court and the person making the same shall fail to comply with all the conditions of sale, and all orders of the Court in respect thereto, the sum deposited by the bidder shall be forfeited, and shall be applied as the Court may direct.

XIX. That the fund arising from the sale of the prop-

erty above mentioned shall be applied as follows, and in the following order, to wit:

First.—To the payment of the costs of this suit, including all proper expenses of sale herein ordered, and such compensation as may be awarded by the Court to said Special Master Commissioner for making such sale and the compensation of the complainant for its services, charges and expenses in the execution of its trusts, fixed and allowed by the Court in the sum of six hundred dollars, and such proper allowances as the Court may make for the fees and disbursements of the solicitors and counsel for said complainant, which are hereby fixed and allowed by the Court in the sum of \$5,189.25, and next to the payment of such compensation as may be allowed to the receiver appointed in this suit.

Second.—To the payment in full of the judgment of the defendant John W. Warren referred to in his answer in the sum of \$2,663.89, with interest thereon to the date of payment from the date of this decree at the rate of eight per cent per annum.

Third.—The remainder of the fund derived from the sale of said properties shall be applied to the payment ratably of the interest and principal due and unpaid upon the bonds secured by said mortgage dated January 1, 1895, without preference of interest over principal.

Fourth.—Should there be any surplus after making the payments above directed the same shall remain in the registry of the Court, to abide such order or decree that the Court may make in respect thereto.

XX. That Henry N. Blake be, and he is hereby, appointed Special Master Commissioner to execute this

decree, and upon confirmation of the sale hereby ordered, and full compliance with the terms of sale by the purchaser or purchasers to make, execute, and deliver to the purchaser or purchasers thereof a deed or deeds of the property sold, and upon the request of the purchaser or purchasers, and exhibition of the Special Master Commissioner's deed or deeds, the receiver having possession of the property sold shall make, execute, and deliver to said purchaser or purchasers good and sufficient deeds of conveyance or evidence of transfer of any and all property sold, which is vested in or standing in the name of said receiver, or to which said receiver in any manner acquired title, and shall surrender to the purchaser or purchasers possession of the property sold. And upon confirmation of said sale and compliance with the terms of sale, by the purchaser or purchasers, he or they shall be entitled to a deed or deeds of assurance to be executed according to law by the defendant Helena Power and Light Company, and the complainant Central Trust Company of New York.

Upon the execution and delivery of such deed or deeds by the Special Master Commissioner, the grantee therein shall be let into possession of the premises conveyed, and the receiver shall deliver all the premises sold which may be in his possession over to the purchaser or purchasers, or his or their successors or assigns.

The Court reserves the right in term time or chambers to appoint another person Special Master Commissioner with like powers in case of the death or disability to act of the Special Master Commissioner hereby desig-

nated, or in case of his resignation or failure to act, or removal by the Court.

XXI. That the purchaser or purchasers of the property herein decreed to be sold shall be invested with and shall hold, possess and enjoy the said mortgaged premises and property herein decreed to be sold, and all the rights, privileges, and franchises appertaining thereto as fully and completely as the Helena Power and Light Company now holds and enjoys, or has heretofore held and enjoyed the same, and further that said purchaser or purchasers shall have and be entitled to hold said plants, railroads, lands and other property so sold, freed and discharged of and from the lien of the mortgage foreclosed in this suit, and from the claims of the parties to this suit, or any of them.

That in case there shall be any deficiency in the payment of the amounts hereinbefore required and directed to be paid, so that such amounts shall not be paid in full, then such Special Master Commissioner shall report to the Court the amount of such deficiency, and the complainant, as trustee under said mortgage of January 1, 1895, shall have judgment against the defendant for the amount due upon the bonds secured by said mortgage, and shall have execution therefore pursuant to the rules and practice of this Court.

XXII. That the Court reserves the right at term time or at chambers to make such further judgment or order at the foot of this decree as may seem just and proper.

Dated April 8th, 1902.

HIRAM KNOWLES,
Judge.

[Endorsed]: Title of Court and Cause. Decree. Filed and entered Apr. 8, 1902. Geo. W. Sproule, Clerk.

And thereafter, to wit, on the 7th day of July, 1902, the said Central Trust Company of New York and the said Helena Power and Light Company, in open court, gave notice of their intention to appeal to the Circuit Court of Appeals for the Ninth Circuit from that portion of said decree in favor of said John W. Warren, and thereupon filed herein their petition for allowance of appeal, which is in the words and figures as follows, to wit:

*In the Circuit Court of the United States, Ninth Circuit,
District of Montana.*

IN EQUITY.

CENTRAL TRUST COMPANY OF NEW YORK,	Complainant,
vs.	
HELENA POWER AND LIGHT COM- PANY and JOHN W. WARREN,	Defendants,

Petition for Allowance of Appeal.

The above-named complainant, Central Trust Company of New York, and the said defendant Helena Power and

Light Company, conceiving themselves aggrieved by so much of the order and decree made and entered in the above-entitled cause on the 8th day of April, 1902, wherein and whereby it was ordered, adjudged and decreed that the judgment of the defendant John W. Warren is a prior lien to the mortgage or deed of trust of the said complainant, and that the amount due upon said judgment should be paid from the proceeds of the sale of the property of the defendant Helena Power and Light Company before the payment of the amount found due upon said mortgage or deed of trust, do hereby petition for an order allowing the said complainant and the said defendant Helena Power and Light Company to prosecute an appeal from said order and decree so made and entered on the 8th day of April, 1902, so adjudging the said judgment of the defendant John W. Warren to be a prior lien to complainant's mortgage or deed of trust, and that the same shall be paid before the payment of the amount found due upon said mortgage or deed of trust, to the United States Circuit Court of Appeals for the Ninth Circuit, under and according to the laws of the United States, in that behalf made and provided, for the reasons specified in the assignment of errors filed herein herewith; and they pray that this appeal may be allowed, and that a transcript of the record and proceedings upon which said order and decree was made, duly authenticated, may be sent to the United States Circuit Court of

Appeals for the Ninth Circuit, and also that an order may be made fixing the amount of security which the said complainant and defendant Helena Power and Light Company shall give and furnish upon such appeal. And your petitioners will ever pray.

CENTRAL TRUST COMPANY OF NEW YORK,
BUTLER, NOTMAN, JOLINE & MYNDERSE,
H. G. and S. H. McINTIRE,

Solicitors for Complainant, Central Trust Company of
New York.

H. G. McINTIRE,

Of Counsel.

HELENA POWER AND LIGHT COMPANY,
H. S. HEPNER,

Solicitor for Defendant Helena Power and Light Com-
pany.

[Endorsed]: Title of Court and Cause. Petition for Allowance of Appeal. Filed July 7th, 1902, Geo. W. Sproule, Clerk.

And thereafter to wit, on the 7th day of July, 1902, the assignment of errors was filed herein, which said assignment of errors is in the words and figures as follows, to wit:

*In the Circuit Court of the United States, Ninth Circuit,
District of Montana.*

IN EQUITY.

CENTRAL TRUST COMPANY OF NEW YORK,	} Complainant,
vs.	
HELENA POWER AND LIGHT COM- PANY and JOHN W. WARREN,	} Defendants.

Assignment of Errors.

Come now the complainant in the above-entitled cause, Central Trust Company of New York, by its solicitors, and also said defendant Helena Power and Light Company, by its solicitor, and say that in the decree of the court herein made and entered on the 8th day of April, 1902, in favor of defendant John W. Warren, and in the record and proceedings therein, there is manifest error, and file the following assignment of errors committed or happening in said cause, and upon which they will rely on their appeal from that portion of the said order and decree made and entered on the 8th day of April, 1902, in the above-entitled cause, whereby it was adjudged that

the judgment of the defendant John W. Warren is a prior lien to the mortgage or deed of trust of the said complainant, and whereby it was ordered and adjudged that the said judgment of said defendant Warren should be paid out of the proceeds of the property ordered sold under said decree prior to the payment of the amount found due and ordered paid upon the mortgage or deed of trust foreclosed in said decree :

I.

The Court erred in denying the motion of the complainant for a decree in its favor as prayed for in its bill of complaint, notwithstanding the answer of the defendant John W. Warren, because the said answer contains and presents no defense to said bill of complaint.

II.

The Court erred in granting affirmative relief to said defendant John W. Warren upon his answer because said answer does not contain facts sufficient to entitle him to such or any affirmative relief.

III.

The Court erred in making and entering its decree in that portion thereof which adjudged that the judgment of the defendant John W. Warren is a prior lien to the mortgage or deed of trust of the complainant upon the property of the defendant Helena Power and Light Company.

IV.

The Court erred in making that portion of its said decree which orders that the amount of the said judgment

of the defendant John W. Warren be paid out of the proceeds of the sale of the property of the defendant, Helena Power and Light Company, before the payment of the amount found due upon the mortgage or deed of trust of the complainant.

V.

The Court erred in holding, as it does in said decree, that the judgment in favor of defendant John W. Warren and against the defendant Helena Power and Light Company for the latter's negligent acts, which judgment was made and entered on June 4, 1901, and which is set up and relied upon by him in his answer herein, is a prior and superior lien upon the property described in and covered by the mortgage or deed of trust of the said Helena Power and Light Company to the complainant which was made and executed and delivered on January 1, 1895, and to foreclose which the present action was and is brought.

VI.

The Court erred in granting affirmative relief to the defendant John W. Warren upon his answer because in said answer the affirmative relief sought by said defendant is not pleaded or set up by cross-complaint as required by the rules of pleading in equity.

Wherefore, the said complainant, Central Trust Company of New York, and the said defendant Helena Power and Light Company pray that the portion of said decree adjudging that the said judgment of defendant John W. Warren is a prior lien to the complainant's mortgage or deed of trust upon the property therein described, and is

entitled to payment from the proceeds of the sale of such property before the payment of the amount due upon complainant's said mortgage or deed of trust, and ordering and adjudging that said judgment of said defendant Warren should be paid out of the proceeds of the property ordered sold under said decree prior to the payment of the amount found due and ordered paid upon the mortgage or deed of trust of complainant foreclosed by said decree, and all thereof, be reversed, set aside and held for naught.

BUTLER, NOTMAN, JOLINE & MYNDERSE,
H. G. and S. H. McINTIRE,

Solicitors for Complainant and Appellant.

H. G. McINTIRE,

Of Counsel.

H. S. HEPNER,

Solicitor for Defendant and Appellant, Helena Power
and Light Company.

Title of Court and Cause. Assignment of Errors. Filed
and Entered July 7, 1902. Geo. W. Sproule, Clerk.

And thereafter, to wit, on the 7th day of July, 1902, an order allowing appeal and fixing amount of bond was duly made and entered herein, which is in the words and figures as follows, to wit:

*In the Circuit Court of the United States, Ninth Circuit,
District of Montana.*

IN EQUITY.

CENTRAL TRUST COMPANY OF NEW YORK,	Complainant,
vs.	
HELENA POWER AND LIGHT COM- PANY and JOHN W. WARREN,	Defendants.

Order Allowing Appeal and Fixing Amount of Bond.

On this 7th day of July, 1902, came the complainant in the above-entitled cause, Central Trust Company of New York, by its solicitors, and also the said Helena Power and Light Company by its solicitor, and filed herein and presented to this Court their petition for the allowance of an appeal from that portion of the order and decree made and entered in said cause on the 8th day of April, 1902, whereby it is adjudged that the judgment of defendant, John W. Warren, is a prior lien to the mortgage or deed of trust of the said complainant, and that the amount due upon said judgment should be paid from the proceeds of the sale of the property of the defendant Helena Power and Light Company, before the

payment of the amount found due upon said mortgage or deed of trust, and pray also that a transcript of the record and proceedings and papers upon which said decree was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, and that such other and further proceedings may be had as may be proper in the premises.

In consideration whereof the Court does hereby allow the said appeal upon the said complainant and defendant Helena Power and Light Company giving a bond according to law, and the rules of the Circuit Court of Appeals in the sum of fifty-four hundred dollars, which shall operate as a supersedeas bond; and does further order that a certified transcript of the record, proceedings and papers upon which said decree, appealed from, was based or rendered, be forthwith transmitted to the United States Circuit Court of Appeals for the Ninth Circuit.

Done in open court this 7th day of July, 1902.

HIRAM KNOWLES,
District Judge.

[Endorsed]: Title of Court and Cause. Order Allowing Appeal and Fixing Amount of Bond. Filed and Entered July 7th, 1902. Geo. W. Sproule, Clerk.

And thereafter, to wit, on the 7th day of July, 1902, the bond on appeal, duly approved, was filed herein, which said bond is in the words and figures as follows to wit:

*In the Circuit Court of the United States, Ninth Circuit,
District of Montana.*

IN EQUITY.

CENTRAL TRUST COMPANY OF
NEW YORK,

Complainant,

vs.

HELENA POWER AND LIGHT COM-
PANY, and JOHN W. WARREN,

Defendants.

Bond on Appeal.

Know all men by these presents, that the said Central Trust Company of New York, a corporation created and existing under and by virtue of the laws of the State of New York, by its solicitors, Butler, Notman, Joline & Mynderse and H. G. and S. H. McIntyre, and said Helena Power and Light Company, a corporation created and existing under and by virtue of the laws of the State of Montana, by its solicitor, H. S. Hepner, as principals, and Thomas A. Marlow and Henry M. Parchen, as sureties, are held and firmly bound unto the above-named defendant, John W. Warren, in the sum of five thousand four hundred dollars, to be paid to the said defendant,

John W. Warren, for the payment of which, well and truly to be made, we bind ourselves, and our and each of our heirs, executors, administrators, and successors jointly and severally, firmly by these presents.

Sealed with our seals and dated this 7th day of July, 1902.

Whereas, the above-named complainant, Central Trust Company of New York, and the above-named defendant, Helena Power and Light Company, have prosecuted an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse so much of the order and decree made and entered in the above-entitled cause on the 8th day of April, 1902, by the Judge of the United States Circuit Court for the District of Montana, wherein and whereby it was ordered, adjudged and decreed that the judgment of the defendant, John W. Warren, referred to in his answer in said cause, in the sum of \$2,663.89, is a prior lien to the mortgage or deed of trust of the said complainant upon the property described therein, and that the said amount due upon said judgment, with interest from the date of said decree at the rate of eight per cent per annum, should be paid from the proceeds of the sale of the property of the defendant, Helena Power and Light Company, before the payment of the amount found due upon said mortgage or deed of trust:

Now, therefore, the condition of this obligation is such that if the above-named complainant, Central Trust Company of New York, and the said Helena Power and Light Company, shall prosecute the said appeal to effect, and shall answer and pay all damages and costs that may be awarded against them if they fail to make good their said

appeal, then this obligation to be void; otherwise to remain in full force and virtue.

CENTRAL TRUST COMPANY OF NEW YORK,
By BUTLER, NOTMAN, JOLINE & MYNDERSE,
H. G. and S. H. McINTIRE,
Its Attorneys.

HELENA POWER AND LIGHT COMPANY,
By H. S. HEPNER,
Its Attorney.

THOMAS A. MARLOW. [Seal]

HENRY M. PARCHEN. [Seal]

State of Montana,
County of Lewis and Clarke. } ss.

Thomas A. Marlow and Henry M. Parchen, being severally duly sworn, each for himself, says that he is one of the sureties named in and who signed the foregoing bond; that he is worth the amount named therein as the penalty thereof, over and above his just debts and liabilities and property exempt by law from execution; that he is a resident and freeholder within the State of Montana.

THOMAS A. MARLOW.

HENRY M. PARCHEN.

Subscribed and sworn to before me this 7th day of July, 1902.

[Seal] CHAS. A. SPAULDING,
Notary Public in and for the County of Lewis and Clarke,
State of Montana.

[Endorsed]: Title of Court and Cause. Bond on Appeal. The within bond is hereby approved. Hiram Knowles, Judge. July 7th, 1902. Filed and entered July 7th, 1902. Geo. W. Sproule, Clerk.

And thereafter, to wit, on the 7th day of July, 1902, a citation was duly issued, and served July 8th, 1902, which citation is hereto annexed:

Citation.

UNITED STATES OF AMERICA—ss.

The President of the United States to John W. Warren,
Greeting:

You are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the city of San Francisco, State of California, within thirty days from the date of this writ, pursuant to an appeal filed in the clerk's office of the Circuit Court of the United States for the District of Montana, wherein you are defendant and appellee, and the Central Trust Company of New York, a corporation, and the Helena Power and Light Company, a corporation, are respectively complainant and appellant, and defendant and appellant, to show cause, if any there be, why the judgment and decree in said appeal mentioned in your favor and against the said Central Trust Company of New York and the said Helena Power and Light Company should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable HIRAM KNOWLES, Judge of the United States District Court for the District of Montana, presiding in the Circuit Court, this 7th day of July, A. D. 1902.

HIRAM KNOWLES,
District Judge.

Attest:

[Seal]

GEO. W. SPROULE,
Clerk.

Service of the within citation and receipt of a copy thereof admitted this 8th day of July, A. D. 1902.

T. J. WALSH and
R. R. PURCELL,

Solicitors for John W. Warren, Appellee.

[Endorsed]: No. 631. In the Circuit Court of the United States, Ninth Circuit, District of Montana. Central Trust Company of New York, Complainant, vs. Helena Power and Light Company, and John W. Warren, Defendants. Citation. Filed and Entered July 8, 1902. Geo. W. Sproule, Clerk.

Clerk's Certificate to Transcript.

United States of America, }
District of Montana. } ss.

I, George W. Sproule, Clerk of the United States Circuit Court for the District of Montana, do hereby certify and return to the Honorable the United States Circuit Court of Appeals for the Ninth Circuit, that the fore-

going volume, consisting of 86 pages, numbered consecutively from 1 to 86, is a true and correct transcript of the pleadings, process, orders, decree, and all proceedings had in said cause, and the whole thereof, as appear from the original records and files of said court in my possession; and I do further certify and return that I have annexed the said transcript and included within said paging the original citation issued in said cause.

I further certify that the costs of the transcript of record amount to the sum of thirty-two 85-100 dollars (\$32.85), and has been paid by appellant.

In witness whereof, I have hereunto set my hand and affixed the seal of the said United States Circuit Court for the District of Montana, at Helena, Montana, this 10th day of July, A. D. 1902.

[Seal]

GEO. W. SPROULE,
Clerk.

[Endorsed]: No. 863. In the United States Circuit Court of Appeals for the Ninth Circuit. The Central Trust Company of New York (a Corporation), and the Helena Power and Light Company (a Corporation), Appellants, vs. John W. Warren, Appellee. Transcript of Record. Upon Appeal from the United States Circuit Court for the District of Montana.

Filed July 19, 1902.

F. D. MONCKTON,
Clerk.

By Meredith Sawyer,
Deputy Clerk.